

1984 WL 249998 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 25, 1984

*1 Thomas M. Boulware, Esquire
County Attorney
Barnwell County
Post Office Box 248
Barnwell, South Carolina 29812

Dear Mr. Boulware:

By your letter of October 19, 1984, you have asked the opinion of this Office on whether one person may concurrently serve on the Barnwell County Vocational Education School Board and on City Council for the Town of Barnwell. You have further advised that the individual was elected to City Council but has not been sworn in due to Justice Department problems; you indicate that the election in which he was elected may be invalidated and a new election ordered by the federal courts.

[Article XVII, § 1A of the South Carolina Constitution](#) provides that ‘. . . no person shall hold two offices of honor or profit at the same time.’ For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. [Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 \(1907\)](#). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. [State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 \(1980\)](#).

This Office has repeatedly held, in numerous prior opinions, that a member of a city council is a public officer for dual office holding purposes. See, for example, [Ops.Atty.Gen.](#) dated January 31, 1984 (copy enclosed); July 8, 1982; September 7, 1982; and June 18, 1982.

The Vocational Education School Board of Barnwell County was created by Act No. 501, 1971 Acts and Joint Resolutions, as amended by Act No. 712 of 1978. Members are appointed by the county governing body for three-year terms. There are no provisions for an oath of office or salary, though the lack of these criteria would not be controlling. The powers and duties of the Board are specified in Section 3 of Act No. 501 to be ‘the same powers and duties of other school boards in the county.’ The Board prepares a budget and has the power to apply for funds from other sources. By Section 3, ‘the prime mission of the board [is] to develop and maintain a vocational education facility and program for all citizens of the county, with emphasis on programs for those under twenty-one years of age.’ It would appear that a Board member would exercise a portion of the sovereign power of the state in providing for education. All criteria considered, it is the opinion of this Office that one who serves on the Vocational Education School Board of Barnwell County would hold an office for dual office holding purposes.

So finding the Board member to hold an office would be in keeping with this Office's consideration of similar offices. By an opinion dated July 8, 1983, this Office found that a member of the Dorchester County Vocational Education Board would be an officer for dual office holding purposes. additionally, this Office has found members of county school boards to be public officers; See [Ops.Atty.Gen.](#) dated September 24, 1982 and March 6, 1979. These opinions are relevant in this instance since board members appear to exercise the same powers as members of county school boards generally. Copies of these opinions are enclosed.

*2 You have advised that the individual has been elected to City Council but has not taken the oath of office. It is questionable when or if he will take office, pending the outcome of Justice Department intervention and/or litigation. The appointment has not yet been made to the Vocational Education School Board. We would advise that because the individual has not taken his

oath of office for City Council, he has not yet qualified for that office. Until he takes the oath of office, he would be available for appointment to another office. See, 63A Am.Jur.2d, Public Officers and Employees, § 131; cf., [Bradford v. Byrnes](#), 221 S.C. 255, 70 S.E. 2d 228 (1952). If he should be appointed to the Board and then qualify for City Council either by taking the oath or by being elected in a new election to City Council and then taking the oath, he would then become a de facto member of the Board, and a vacancy on the Board would exist by operation of law. See, [Bradford v. Byrnes](#), supra; [Heyward v. Long](#), 178 S.C. 351, 183 S.E. 145 (1936); [Smith v. City Council of Charleston](#), 198 S.C. 313, 17 S.E.2d 860 (1942).

To summarize, it is the opinion of this Office that one person concurrently serving on the City Council for the Town of Barnwell and on the Vocational Education School Board of Barnwell County would most probably violate the dual office holding prohibitions of the state Constitution. But, because the individual has not qualify for the position of City Council member since he has not taken the oath, he does not yet hold that office and may be appointed to the Vocational Education School Board.

We trust that this satisfactorily responds to your inquiry Please advise if we may provide additional information of assistance.
Sincerely,

Patricia D. Petway
Assistant Attorney General

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